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Letter dated 18 January 2008 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

On behalf of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, I have the honour to submit herewith the second report of the Counter-Terrorism Committee on the implementation of resolution 1624 (2005) to the Security Council for its examination (see annex).

The Committee would appreciate it if the present letter and its annex could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Mirjana **Mladineo**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Second report of the Counter-Terrorism Committee to the Security Council on the implementation of resolution 1624 (2005)

I. Introduction

1. The Security Council, in the second preambular paragraph of its resolution 1624 (2005) of 14 September 2005, called upon all States to take a number of steps in connection with the "imperative to combat terrorism in all its forms", including steps aimed at prohibiting by law and preventing incitement to commit a terrorist act or acts. It called upon all States to report to the Counter-Terrorism Committee, as part of their ongoing dialogue, on the steps they have taken to implement the resolution, and directed the Committee to report back to the Council on such implementation in 12 months. The first report of the Counter-Terrorism Committee on the implementation of resolution 1624 (2005) was submitted to the Council for its consideration on 14 September 2006 (S/2006/737) and took into account the 69 State reports received as at 7 September 2006. The present report updates the first report, taking particular account of the reports received from States during the period from 7 September 2006 to 16 July 2007.

2. As at 16 July 2007, a total of 88 States had reported to the Committee on their implementation of resolution 1624 (2005) (see appendix). Although this total includes States from all regional groups, many Member States have not yet reported to the Committee. As noted in the first report, this limits the Committee's ability to report to the Council on the implementation of the resolution.

3. The Council, in paragraph 6 (b) of resolution 1624 (2005), further directed the Committee to "work with Member States to help build capacity, including through spreading best legal practice and promoting exchange of information in this regard". The Committee continues to carry out this work, including in the course of its visits to Member States.

II. Prohibition and prevention of incitement

4. In paragraph 1 of resolution 1624 (2005), the Council called upon all States "to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to (a) prohibit by law incitement to commit a terrorist act or acts" (hereinafter, "incitement") and (b) "prevent such conduct". The reports submitted to the Committee since 7 September 2006 reinforce its previous conclusion that, while virtually all reporting States indicate that they have provisions in their legal regimes to prohibit and prevent incitement, States continue to hold varying views on the steps necessary or appropriate to achieve these goals.

5. Of the 19 States that reported during the period from 7 September 2006 to 16 July 2007, 10 informed the Committee that they had introduced legal provisions expressly criminalizing incitement. Three other States indicated that they had established terrorist acts as criminal offences and had also introduced provisions criminalizing incitement to commit any offence. Four States reported that they had no criminal provisions specific to terrorist acts, although such acts would generally

fall under other criminal offences, to which general anti-incitement provisions applied. Two of those four States informed the Committee that they were in the process of drafting specific counter-terrorism legislation. Thus, taking into account all 88 responses submitted to the Committee since September 2005, somewhat fewer than half of all reporting States have expressly criminalized incitement, although most profess to address the problem through general criminal provisions.

6. As noted in the first report, many States indicate that they address the problem of incitement through widely recognized accessory offences such as aiding, abetting, participating and soliciting. One State considers that threats can be incitement, while another includes advocacy. Some States would limit liability to views expressed in open meetings or elsewhere in the public domain, while one stated that it would penalize the utterance of "subversive words" if other conditions were met, such as the existence of a seditious intention or the likelihood of ensuing organized violence. Two States reported that they would punish the possession of printed materials, images or articles considered to be incitement under general criminal provisions.

7. Among States reporting the introduction of express prohibitions on incitement, there is clearly a divergence of views regarding the scope of the term "incitement". For some, incitement includes abetment or threatening to commit a terrorist act or acts, while one State extends liability to any act that "justifies, encourages or finances" terrorism. While most States consider the making of certain spoken statements to be incitement, two reported that incitement included the knowing distribution of related printed materials.

8. Among recently reporting States, there was little discussion as to whether a statement, in order to be punishable as incitement, must be proved to have an actual likelihood of leading to the commission of a terrorist act. In its previous report, the Committee noted that several States considered such proof to be necessary in order not to infringe on the right to freedom of expression. However, several recently reporting States noted that they subject their anti-incitement provisions to close scrutiny in the light of their obligations under international law, including human rights law.

9. With respect to punishing incitement, several States noted that the crime of incitement incurred the same liability as the terrorist act itself, while one noted that it subjected those found guilty of incitement to 5 to 10 years' imprisonment, in addition to a fine. One State noted that an individual guilty of incitement would be considered a terrorist accomplice and, under its anti-terrorism law, would "be strictly punished, with the highest possible sentence being capital punishment". Another State reported that persons believed to be involved in incitement could be detained for up to three months for interrogation, placed under stringent monitoring mechanisms and, if restrictions were violated, detained for up to one year.

III. Denial of safe haven

10. In paragraph 1 of resolution 1624 (2005), the Council called upon all States to "deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of" incitement.

11. In this respect, several recently reporting States cited provisions they had enacted to prevent or refuse entry to persons referred to in paragraph 1 of the resolution. Several States that have ratified the 1951 Convention relating to the Status of Refugees referred to their implementation of its article 1 (F), which excludes from the Convention's protection any person with respect to whom there are serious reasons for considering that he or she has committed one of several specified crimes, or acts contrary to the purposes and principles of the United Nations. Two States stressed their strict interpretation of the language in article 1 (F), conditioning exclusion on the existence of "serious reasons".

12. Half of the recently reporting States informed the Committee of practical measures that they had taken to prevent persons referred to in paragraph 1 of the resolution from entering their territory. Some reported stricter monitoring of borders, including stringent checks of travel documents. Others referred to their use of lists to "watch" and "stop" persons suspected of terrorist activity. The cited lists included the consolidated list maintained by the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities.

13. Several States referred to extradition and mutual legal assistance agreements and mechanisms established with other States. Some also referred to arrangements for inter-State information exchange. Many States referred to their work with the International Criminal Police Organization (INTERPOL).

IV. Strengthened security of international borders

14. In paragraph 2 of resolution 1624 (2005), the Council called upon all States "to cooperate, inter alia, to strengthen the security of their international borders, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures with a view to preventing those guilty of [incitement] from entering their territory". Most States indicated ways in which they are cooperating in this respect.

15. Several States described new initiatives to prevent the entry of persons with forged or falsified travel documents. Some included information on training courses for police and customs officers on identifying forged documents, while others referred to equipment to detect forged travel documents, including biometric security systems.

16. Most States described their cooperation with other States on the basis of information exchange, which includes both bilateral exchanges and regional measures, including through the Commonwealth of Independent States, the Common Market of the South, the Schengen area, the Association of Southeast Asian Nations (ASEAN) and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation. Some States reported on information exchange with and through INTERPOL.

17. One State noted that "the lack of control by certain neighbouring countries over their sides of the border" had created difficulties, necessitating the construction of "security walls".

V. Dialogue and understanding among civilizations

18. In paragraph 3 of the resolution, the Council called upon all States "to continue international efforts to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures". Virtually all States cited their active support for international efforts in these areas, as well as national initiatives they had undertaken for the same purpose.

19. At the international level, States referred to participation in events such as those of the Anna Lindh Euro-Mediterranean Foundation for Dialogue between Cultures, the Asia-Europe Meetings, events organized by the Organization of the Islamic Conference and the Interfaith Dialogues held in Bali, Indonesia, in 2005 and Larnaca, Cyprus, in 2006. States also mentioned other inter-faith conferences, such as the International Symposium on Human Civilizations and Cultures, held in Tunis in 2006, and the 8th Meeting of the Council of Religion for Peace, held in Kyoto, Japan, in August 2006. States again noted their support for initiatives of the United Nations Educational, Scientific and Cultural Organization to foster intercultural dialogue and promote diversity.

20. Among regional initiatives mentioned in States' reports were the ASEAN Regional Forum, the European Union's action plan and strategy on combating radicalization and recruitment, initiatives to promote tolerance and mutual respect within the Organization for Security and Cooperation in Europe and the conference on Regional Interfaith Cooperation for Peace, Development and Human Dignity, held in the Philippines in 2006.

21. With respect to national initiatives, many States reported that they sought to ensure tolerance and respect among religions by prohibiting discriminatory acts by law. Some reported on measures such as a national plan against discrimination, a centre or chair for national dialogue and a nationally organized conference on moderation. One State included information on cultural exchanges involving performing and non-performing arts, exhibitions, visits of distinguished personalities and the provision of scholarships to foreign students. Another State referred to cinematography, theatrical productions, festivals, symposiums and colloquiums.

VI. Countering incitement motivated by extremism and intolerance

22. In paragraph 3 of resolution 1624 (2005), the Council further called upon all States "to take all measures as may be necessary and appropriate and in accordance with their obligations under international law to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent the subversion of educational, cultural and religious institutions by terrorists and their supporters". As noted in the Committee's first report, States generally focus on two areas with respect to their implementation of this element of the resolution: repression and prevention.

23. Many States noted their criminalization of discriminatory acts, hate speech and similar conduct. In this regard, mention was also made of the relevance of the

International Convention on the Elimination of All Forms of Racial Discrimination. One State reported that "actions aimed at the incitement of national, racial or religious hatred, racial superiority or humiliation of national dignity" were punishable by a fine, a sentence of correctional labour for up to two years or imprisonment for between two and four years.

24. One State cited a programme in which "the leaders of the various ethnic, cultural and religious communities are urged to promote the values of mutual respect and to condemn intolerant behaviour". Another reported that "any individuals, associations, organizations, societies ... are required to register with the relevant authorities if they wish to conduct activities such as preaching, missionary work, cultural and religious performances". A third State noted that it monitored "religious sermons, schools, universities and the media in order to prevent incitement to commit terrorist acts".

25. Many States reported measures taken in the education sector. One noted that its curricula fell "within the framework of the universal values of tolerance, respect for others and rejection of all forms of discrimination", that curricula of religious schools such as madrasas had been reviewed and that new textbooks "focus on the values of peace and tolerance". Another State reported that teaching must be based on "moderation". A third State reported that educational institutions, in addition to governmental authorities and the media, were "encouraged to identify any risk of intellectual perversity". A fourth State noted that its Government was empowered to close schools if it was satisfied that they were being used for purposes detrimental to the State or to the public.

26. Some States discussed preventive measures such as national action plans against discrimination and racism, which included effective protection against and redress of racism. One State noted that it extended financial grants to voluntary organizations to promote national integration and communal harmony through special programmes. Another State noted the introduction of a discussion forum on Islam aimed at improving knowledge of Islam and encouraging a diversity of views and opinions about Islam and Muslims. Several States referred to the important role of religious leaders in stressing the values of peace and tolerance as set out in the doctrines of various religions.

VII. Compliance with obligations under international law

27. In paragraph 4 of resolution 1624 (2005), the Council stressed that States "must ensure that any measures taken to implement paragraphs 1, 2 and 3 of this resolution comply with all of their obligations under international law, in particular international human rights law, refugee law and humanitarian law".

28. Approximately half of the States reporting since 7 September 2006 provided information on how they sought to ensure compliance with paragraph 4 of the resolution. With respect to general principles, one stated that "counter-terrorism measures must be applied within the broader framework of compliance with international human rights law, refugee law and humanitarian law". Another noted that it attached "great importance to the observance and promotion of human rights, humanitarian law and the right to asylum", while a third noted "continuing effort to strengthen the rule of law". One State noted the particular relevance of principles including the presumption of innocence and equality under the law.

29. Several States referred to their adherence to international conventions, including the Geneva Conventions of 1949 and their two Additional Protocols of 1977, the Convention against Torture and the Convention on the Rights of the Child. One noted that it "complies with and implements the recommendations, resolutions and decisions" of the United Nations organs created under human rights treaties and the special procedures and mechanisms of the Human Rights Council.

30. Some States referred to regional human rights conventions and mechanisms, including the American Convention on Human Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights.

31. One State stated that it "respects and guarantees the independence and institutional autonomy of courts of law". Another noted that it had not established special courts, with "ordinary courts retain[ing] jurisdiction over terrorist offences", adding that periods of custody and preventive detention were the same as for other offences and that the rights of the defence were guaranteed. Several States noted their establishment of national human rights institutions, and another stressed the need for social dialogue with respect to relevant counter-terrorism measures.

32. On refugee law, one State referred to its hosting of a large number of refugees from a neighbouring country. Another noted that it "currently has no obligations pertaining to upholding the rights of refugees, as it has not acceded to either the [1951 Convention relating to the Status of Refugees] or to its Protocol relating to the status of refugees", but nevertheless upheld "the constitutional rights of its citizens". This State took issue with actions of the United Nations High Commissioner for Refugees concerning individuals who had applied for refugee status in a neighbouring country after being accused of terrorism-related offences.

VIII. Conclusion

33. To date, fewer than half the States Members of the United Nations have reported to the Counter-Terrorism Committee on the steps they have taken to implement Security Council resolution 1624 (2005). Their reports indicate that States adopt a wide range of approaches to address the problem of incitement. While some reporting States expressly prohibit incitement in their criminal laws, other States use alternative approaches such as the application of accessory criminal offences, including aiding, abetting and solicitation.

34. The reports received from States indicate that active steps continue to be taken to address other aspects of resolution 1624 (2005), including measures to deny safe haven, strengthen the security of international borders, promote dialogue and understanding among civilizations and counter incitement motivated by extremism and intolerance. Many States also informed the Committee of steps they had taken to ensure that their measures to implement the resolution complied with all their obligations under international law, in particular international human rights law, refugee law and humanitarian law.

35. The Counter-Terrorism Committee will continue its efforts to fulfil the mandate given to it by the Security Council in its resolution 1624 (2005). The Committee encourages all States that have not yet reported on their implementation

of the resolution to do so as soon as possible. On the basis of the reports received so far from States and of the information gathered during visits, the Committee will initiate a discussion to explore the needs of States for technical assistance on all aspects of the resolution, and it will aim to facilitate the provision of such assistance as appropriate.

Appendix

A. List of States that had submitted reports on their implementation of Security Council resolution 1624 (2005) to the Counter-Terrorism Committee as at 16 July 2007

1. Algeria
2. Andorra
3. Argentina
4. Armenia
5. Austria
6. Azerbaijan
7. Belarus
8. Belgium
9. Bosnia and Herzegovina
10. Brazil
11. Brunei Darussalam
12. Bulgaria
13. Burkina Faso
14. Canada
15. Chile
16. China
17. Colombia
18. Cuba
19. Cyprus
20. Czech Republic
21. Denmark
22. Djibouti
23. Egypt
24. El Salvador
25. Estonia
26. Finland
27. France
28. Germany
29. Greece
30. Hungary

31. India
32. Indonesia
33. Iran (Islamic Republic of)
34. Iraq
35. Ireland
36. Israel
37. Italy
38. Japan
39. Jordan
40. Kuwait
41. Lao People's Democratic Republic
42. Latvia
43. Lebanon
44. Libyan Arab Jamahiriya
45. Liechtenstein
46. Lithuania
47. Luxembourg
48. Mauritius
49. Mexico
50. Moldova
51. Monaco
52. Morocco
53. Myanmar
54. Namibia
55. Netherlands
56. New Zealand
57. Norway
58. Pakistan
59. Paraguay
60. Poland
61. Portugal
62. Qatar
63. Republic of Korea
64. Romania

65. Russian Federation
66. Saudi Arabia
67. Serbia and Montenegro
68. Seychelles
69. Singapore
70. Slovakia
71. Slovenia
72. South Africa
73. Spain
74. Suriname
75. Sweden
76. Switzerland
77. Syrian Arab Republic
78. Tajikistan
79. Thailand
80. Tunisia
81. Turkey
82. Turkmenistan
83. Ukraine
84. United Kingdom of Great Britain and Northern Ireland
85. United States of America
86. Uzbekistan
87. Viet Nam
88. Yemen

B. List of States that submitted reports on their implementation of Security Council resolution 1624 (2005) to the Counter-Terrorism Committee during the period from 7 September 2006 to 16 July 2007

1. Algeria
2. Argentina
3. Armenia
4. Azerbaijan
5. Belgium
6. Brunei Darussalam
7. India

8. **Iran (Islamic Republic of)**
9. **Iraq**
10. **Ireland**
11. **Kuwait**
12. Lao People's Democratic Republic
13. Myanmar
14. Pakistan
15. **Saudi Arabia**
16. **Tunisia**
17. **Turkmenistan**
18. **Uzbekistan**
19. **Viet Nam**